IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

WRIT PETITION NO. 191 OF 2006

1. Prabhodan Education Society,
   Society registered under the Societies,
   Registration Act, 1860, having office at 'Girija'
   Pundalik Nagar, P.O. Alto Porvorim Goa,
   through its Secretary Datta Bhicaro Naik
   resident of Alto Porvorim Bardez Goa.

2. Shri Prabhakar Narayan Bhate,
   President of Prabhodan Education Society,
   Resident of Alto Porvorim Bardez Goa. .... Petitioners

Versus

1. State of Goa, through Chief Secretary,
   Having Office at New Secretarial Complex,
   Alto Porvorim Bardez Goa.

2. The Director of Education,
   Government of Goa,
   Directorate of Education,
   Panaji Goa. .... Respondents

Shri S.D. Lotlikar, Senior Advocate with Ms. S. Naik, Advocate for the Petitioners.

Mr. S.S. Kantak, Advocate General with Ms. G. Bhonsule, Addl. Govt. Advocate for the Respondents.

CORAM : A. P. LAVANDE &
N. A. BRITTO, JJ.

DATE : 5th May, 2006

JUDGMENT (Per N.A. BRITTO, J.)

Heard Shri Lotlikar, the learned Senior Counsel on behalf of the Petitioner and Shri S.S. Kantak, the learned Advocate on behalf of the Respondent.

2. On account of dwindling in the number of students in Government Primary Schools, the Government decided by order dated 22/12/2000 to amalgamate the Government Primary School situated at Pomburpa with the Government Primary School situated at Ecoxim alongwith other 52 primary schools located in various Talukas of the State. The Government Primary School (GPS) at Ecoxim is at a distant of 2.6. kms.

3. The Petitioner by letter dated 20/04/2001 approached the Director of Education stating that they were in education for the last 13 years and that they had learnt about the said order and requested the Director to hand over the management of two schools, one of them being

Government Primary School at Pomburpa and the other being Government Primary School at Khorjuvem. The last school has already been handed over by the Petitioner to the Government.

4. The Director of education by letter dated 23/05/2001 accepted the request of the Petitioner to run the said GPS at Pomburpa on certain terms and conditions. One of the conditions was that the premises of the said GPS alongwith building would be made available to the Petitioner to run the school on an annual rent of Re.1/-. Another condition was that after entering into an agreement a formal permission to run the school would be granted and till that time the permission granted by virtue of letter dated 23/05/2001 would be treated as provisional permission only. Condition 12 reads as follows:

> (12) Initially the permission will be for a period of 5 years. Education department reserves the right to withdraw the permission if the same is used for any other purpose than primary school/pre-primary school education. However, any additional schemes involving villagers/local residents/students for upgrading I.T. Knowledge will be permitted.

5. By letter dated 23/01/2003 recognition was granted for the academic year 2001-2002. The Petitioner started the said school with 4 students in the first year, 14 students in the second year, 17 students in the third year, 27 students in the forth year and 44 students in the last year that is to say 2005-2006. At the expiry of 5 years, the Director of Education by letter dated 21/02/2006 informed the Petitioner that the Government has now decided to cancel and withdraw the provisional permission granted to the petitioner with effect from 22/04/2006, being the last working day of the academic year 2005-2006 and called upon the Petitioner to hand over the physical possession of the said school alongwith assets taken over for the purpose of running the school. The Petitioner by order dated 10/04/2006 requested the Director of education to withdraw the said notice, but by order dated 17/04/2006 the Assistant Director of Education informed the Petitioner to remain present in the school premises on 22/04/2006 during the working hours and hand over the peaceful possession of the school with its assets. The Petitioner has now sought a writ to direct the Respondents to withdraw/cancel the said notices/orders dated 21/02/2006 and 22/04/2006.

6. At the time of hearing, Shri Kantak, the learned AG has made a statement that the GPS at Pomburpa would be run as GPS from ensuing June, 2006. At the time of arguments, Shri Lotlikar, the learned Senior Counsel on behalf of the Petitioner has placed before us the basic features of Sarva Shiksha Abhiyan, a programme for universal elementary education frame work for implementation issued by the Ministry of Human Resources Development and has submitted that the GPS was handed over to the Petitioner because by virtue of the said scheme a public–private partnership in Sarva Shiksha Abhiyan was accepted by the government. We are unable to accept this submission of learned Senior Counsel Shri Lotlikar. There is no whisper in the petition to Sarva Shiksha Abhiyan in as much as there is also no whisper about the same either in the order dated 22/12/2000 by which GPS were sought to be amalgamated or the order dated 23/05/2001 by which the Petitioner was granted permission to run the subject GPS school at Pomburpa. We are therefore unable to accept that the GPS at Pomburpa was handed over to the Petitioner under any scheme. The Petitioner has referred to the said Sarva Shiksha Abhiyan in affidavit in rejoinder only at the peril of ignoring the same and therefore any reference to the said Sarva Shiksha Abhiyan deserves to be ignored. The entire challenge in the petition is on the ground that the notice dated 21/02/2006

as well as the communication dated 17/04/2006 are unjust, unreasonable, arbitrary and illegal and the same have been issued with malafide intention.

7. We are unable to accept the Petitioners contention that the Respondents would be allowed to take over the premises of the school but not the school because the school started by the Petitioners did not belong to the Respondents. The school was handed over to the Petitioners to be run by them and for doing so the Petitioners were granted provisional permission. The said provisional permission was not independently granted to the Petitioner to run the school. In case the Petitioners wish to run the school in the same village the Petitioner would always be at liberty to apply for such permission in terms of Section 5 of the Education Act. We are also unable to accept the Petitioners contention that the GPS at Khorjuvem was handed over by the Petitioner because the experiment there had failed because as already stated there was no experiment to be conducted. It is quite probable that the Petitioner was unable to get adequate number of students to run the GPS at Khorjuvem. The policy of handing over the school to private managements and now to take them back has been uniformly followed by the Government and therefore there is no question of any arbitrariness and this is evident

from the fact that the Petitioner itself has chosen to hand over the said GPS at Khorjuvem to the Directorate. Condition 12 is sought to be misinterpreted by the Petitioner. In terms of the said condition the permission granted was initially for a period of 5 years which always meant that the Directorate at the end of 5 years could put an end to that permission and that is what has been done. The right which was reserved to withdraw the permission was during the said period of 5 years, in the event the school was used for other purpose than a primary school and that is what a bare reading of condition 12 conveys. Admittedly no agreement or formal permission as stipulated by condition 11 of letter dated 23/05/2001 was executed between both the parties. In our view the letters dated 21/02/2006 and 17/04/2006 are in conformity with the said agreement/letter dated 23/05/2001 and there is absolutely nothing arbitrary about the termination of the agreement between the Petitioner and the Directorate of Education as contemplated by the said letter dated 23/05/2001. At the cost of repetition it may be stated that the Petitioner has not been singled out and the policy to hand over the management of certain schools to private parties as now been uniformly revoked by the Directorate of Education and the Petitioner cannot be an exception to the said policy decision.

7. We find no merit in this Petition. Therefore the same is hereby dismissed.

A. P. LAVANDE, J.

N. A. BRITTO, J.

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